

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0508**

Patrice V. Nerad,
Appellant,

vs.

Ryan Blair Magnus,
Respondent,

Jones Law Office, LLC, a/k/a Jones and Magnus, Attorneys at Law,
Respondent.

**Filed December 11, 2023
Affirmed
Halbrooks, Judge***

Blue Earth County District Court
File No. 07-CV-22-2947

Craig J. Beuning, Holstad & Knaak, P.L.C., St. Paul, Minnesota (for appellant)

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Minnesota (for respondent Ryan Magnus)

Steven M. Sitek, Shannon E. Eckman, Bassford Remele, P.A., Minneapolis, Minnesota
(for respondent Jones Law Office)

Considered and decided by Larkin, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant challenges the district court's dismissal of most of her claims against respondents as barred by the six-year statute of limitations in Minn. Stat. § 541.05, subd. 1 (2022), arguing that the statute was tolled by the doctrine of fraudulent concealment. Appellant also challenges the dismissal of her remaining claims for failure to state a claim, arguing that the district court incorrectly applied the law. Because appellant did not bring most of her claims within six years of their accrual, because there is no tolling by fraudulent concealment, and because the remaining claims fail to state a claim, we affirm.

FACTS

The facts, based on the allegations in the complaint and taken in the light most favorable to appellant Patrice V. Nerad as the nonmoving party, are as follows. Nerad retained respondent Ryan Blair Magnus, formerly a partner at respondent Jones Law Office LLC¹ (the law firm), to represent her in three legal matters beginning in 2009 (the legal matters). The legal matters included a medical-malpractice action against Regions Hospital, efforts to vacate a related civil commitment, and claims relating to a 2015 purchase of real property. The outcomes of the legal matters were not favorable to Nerad.

In April 2017, Magnus informed Nerad that he was addicted to methamphetamine. In 2021, Magnus was suspended from the practice of law after stipulating to the allegations

¹ At the time of representation, the law firm was known as Jones and Magnus, Attorneys at Law.

in a petition for disciplinary action, which included allegations of unprofessional conduct in the legal matters.²

In 2022, Nerad sued Magnus and the law firm, alleging legal malpractice, breach of fiduciary duty, fraudulent concealment, breach of contract, breach of the implied covenant of good faith and fair dealing, and vicarious liability, all arising from the legal matters.³ Magnus and the law firm filed separate motions to dismiss under Minn. R. Civ. P. 12.02(e). The district court granted the motions. The district court determined that claims arising from the medical-malpractice and civil-commitment matters were barred by the statute of limitations, which was not tolled by the doctrine of fraudulent concealment. The district court also determined that the separately pleaded count for “fraudulent concealment” failed to state a claim upon which relief could be granted. The district court further concluded that claims based on handling of the real-property matter lacked causation as a matter of law because Nerad had discharged Magnus and the law firm and retained new counsel prior to expiration of the deadline upon which the claims were based. Finally, the district court dismissed the vicarious-liability count because all underlying tort claims had been dismissed.

This appeal follows.

² The petition, which is attached to and referenced in the complaint, asserts, “Beyond their attorney-client relationship, [Magnus] also sat on Ms. Nerad’s Ph.D. dissertation panel, retained Ms. Nerad as an expert in a number of cases and sought Ms. Nerad’s counsel as a spiritual advisor.”

³ It appears that all counts are alleged against both Magnus and the law firm, except vicarious liability, which is directed solely to the law firm.

DECISION

Nerad challenges the dismissal of her claims, arguing that the district court erred in determining that the statute of limitations was not tolled by fraudulent concealment and that the fraudulent-concealment count and counts arising out of the real-property matter failed to state a claim.

We review de novo a district court's dismissal for failure to state a claim. *Walmart Inc. v. Winona County*, 963 N.W.2d 192, 196 (Minn. 2021). "A party fails to state a claim under Rule 12.02(e) when its complaint does not set forth a legally sufficient claim for relief." *Id.* (quotation omitted). In reviewing a dismissal under Minn. R. Civ. P. 12.02(e), we "accept facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014); *see also Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 501 (Minn. 2021) (clarifying that legal conclusions in a complaint are not accepted as true). Similarly, we "review de novo the construction and application of a statute of limitations, including the law governing the accrual of a cause of action." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted); *see also Hansen v. U. S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019) ("When a motion to dismiss is based on the running of a statute of limitations, we have followed this same general rule: look to the facts alleged in the complaint, accept those facts as true, and construe inferences from those facts in favor of the plaintiff.").

Pursuant to Minn. Stat. § 541.05, subd. 1, causes of action for legal malpractice, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of

fiduciary duty, and fraud must be commenced within six years. “We have consistently held that the statute begins to run when the cause of action accrues, that is, when the plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted.” *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006); *see also Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011) (“A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim.”).

Minnesota applies the “some damage” rule to determine when a legal-malpractice claim accrues. *Antone*, 720 N.W.2d at 335-36; *see also Mittelstaedt v. Henney*, 969 N.W.2d 634, 639 (Minn. 2022) (“‘Malpractice’ is a category that includes multiple legal theories for recovery against professionals, including professional negligence, breach of fiduciary duty, and breach of contract.”).⁴ Under the some-damage rule, “the statute of limitations begins to run when some damage has occurred as a result of the alleged [wrongful] act.” *Palmer v. Walker Jamar Co.*, 945 N.W.2d 844, 847 (Minn. 2020) (quotation omitted). For purposes of accrual, “some damage” is “the occurrence of any compensable damage.” *Antone*, 720 N.W.2d at 336-38 (addressing accrual of plaintiff’s legal-malpractice claim against attorney for drafting of antenuptial agreement and concluding that some damage occurred on the date of the marriage because that was the point at which the plaintiff “passed a point of no return” and “lost the legal right to

⁴ To the extent breach-of-contract or breach-of-the-implied-covenant-of-good-faith-and-fair-dealing claims accrue when the breach occurs, *Park Nicollet Clinic*, 808 N.W.2d at 832, accrual of the contract claims would have occurred earlier and need not be analyzed separately for statute-of-limitations purposes.

unfettered ownership in his premarital property”). We address most of Nerad’s claims in the context of each legal matter because of overlap in the facts relating to accrual.

I. Medical-Malpractice Matter

In 2009, Nerad entered into an agreement with Magnus to represent her in a medical-malpractice lawsuit against Regions Hospital and others. In 2010, Magnus commenced suit on behalf of Nerad. Magnus failed to communicate or effectively prosecute the medical-malpractice action, and in 2011 it was dismissed under rule 12.02. In 2012, this court affirmed the dismissal of that complaint as a collateral attack on Nerad’s civil commitment. *Nerad v. Regions Hosp.*, No. A11-1439, 2012 WL 987313, at *1 (Minn. App. Mar. 26, 2012).

A. The legal-malpractice, breach-of-contract, breach-of-the-implied-covenant-of-good-faith-and-fair-dealing, and breach-of-fiduciary-duty claims would have survived a motion to dismiss as of March 2012.

To prevail on a legal-malpractice claim, a plaintiff must establish: “(1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff’s damages; (4) that but for [attorney-]defendant’s conduct the plaintiff would have been successful in the prosecution or defense of the action.” *Antone*, 720 N.W.2d at 335 (alteration in original) (quoting *Blue Water Corp. v. O’Toole*, 336 N.W.2d 279, 281 (Minn. 1983)). A breach-of-contract claim requires (1) formation of a contract, (2) performance by the plaintiff of any conditions precedent, and (3) breach by the defendant. *Park Nicollet Clinic*, 808 N.W.2d at 833. The implied covenant of good faith and fair dealing “bars a party from unjustifiably hindering the other party’s performance.” *Minnwest Bank Central v. Flagship Properties LLC*, 689

N.W.2d 295, 303 (Minn. App. 2004) (citing *In re Hennepin County 1986 Recycling Bond Litigation*, 540 N.W.2d 494, 502 (Minn. 1995)).

The elements of a legal malpractice breach-of-fiduciary-duty claim are: (1) the existence of an attorney-client relationship, which establishes a standard of conduct, i.e., the duty; (2) a breach by the attorney of one or more of the fundamental obligations owed to the client under that standard of conduct; (3) causation; and (4) damages.

Mittelstaedt, 969 N.W.2d at 640 (citing *Hansen*, 934 N.W.2d at 327). The fundamental obligations are “the duty of candor, the duty to disclose material facts, and the duty to put the client’s interests ahead of the attorney’s interests.” *Id.* Minnesota has not adopted the continuous-representation doctrine. *Frederick v. Wallerich*, 907 N.W.2d 167, 174 n.4 (Minn. 2018). Each of these claims turns on a failure or refusal to perform a required duty.

Here, the gravamen of the malpractice, contract, implied-covenant, and fiduciary-duty counts in the complaint is that Magnus was working while impaired and Magnus and the law firm failed to represent Nerad effectively. The complaint alleges that Nerad was harmed personally and professionally by the posting of this court’s March 26, 2012, opinion online, which “reveal[ed] her civil commitment hearings.” We agree with the district court that these causes of action accrued no later than March 26, 2012, when this court affirmed the dismissal of the medical-malpractice action. *See Nerad*, 2012 WL 987313, at *1. At that point, the allegedly wrongful conduct had occurred, and Nerad had incurred some damage as a result. *See Hansen*, 934 N.W.2d at 327-28 (explaining that the some-damage rule does not require “that a prospective plaintiff be aware of all the operative facts giving rise to a cause of action,” but once a party can sufficiently allege facts for “any

compensable damage, whether specifically identified in the complaint or not” then the statute of limitations begins to run). Although Nerad argues that she was unaware of the underlying substance abuse until 2017, the elements of the claims do not depend on that information. Put another way, the reason for the deficient performance is not an element of legal malpractice, breach of contract, breach of the implied covenant of good faith and fair dealing, or breach of fiduciary duty. Therefore, Nerad could have pursued claims for legal malpractice, breach of contract, breach of the implied covenant of good faith and fair dealing, or breach of fiduciary duty with allegations sufficient to survive a motion to dismiss as of March 2012. Accordingly, the statute of limitations for these claims expired in March 2018.

To the extent the breach-of-fiduciary-duty claim is based on a distinct theory of failure to disclose drug use, the claim is subject to the same analysis under the some-damage rule of accrual.⁵ Accepting the facts in the complaint as true, Nerad suffered some damage no later than March 26, 2012, when this court affirmed the dismissal of her medical-malpractice action. *See Hansen*, 934 N.W.2d at 327-28. Accordingly, Nerad could have pursued a claim for breach of fiduciary duty that survived a motion to dismiss as of March 2012, and the statute of limitations expired in March 2018. We are not persuaded otherwise by Nerad’s argument on appeal that the complaint alleges that the statute of limitations did not begin to run until April 2017. Although we accept the facts

⁵ We are aware of no authority, and Nerad cites to none, that expressly imposes a fiduciary duty to disclose drug use.

alleged in the complaint as true, we are not bound by legal conclusions. *Halva*, 953 N.W.2d at 501.

B. The doctrine of fraudulent concealment does not toll the six-year statute of limitations under the facts alleged.

Under the doctrine of fraudulent concealment, the statute of limitations does not run while the defendant “fraudulently conceals from the plaintiff the facts constituting a cause of action.” *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 514 (Minn. 2014) (quotation omitted). Taking as true the allegation that Magnus and the law firm intentionally did not disclose that Magnus was working while under the influence of methamphetamine, Nerad has not explained how the substance abuse constituted an element of her legal-malpractice, breach-of-fiduciary-duty, breach-of-contract, or breach-of-implied covenant claims related to the medical-malpractice action. As the district court noted, “Plaintiff’s Complaint alleges that Defendants concealed Defendant Magnus’ alleged drug use from her. . . . It does not allege that Plaintiff was ignorant of any of the required elements and facts underlying the malpractice claims.” To the extent Nerad contends that the complaint properly alleges breach of a duty to disclose drug addiction to a client, she does not identify any legal authority supporting this theory of liability, and we are aware of none. Because Nerad has not shown that the information learned in 2017 was a fact constituting any cause of action, the failure to disclose that fact does not toll the statute of limitations for Nerad’s claims.

II. Civil-Commitment Matter

In 2011, Magnus began representing Nerad in an effort to vacate her 2007 civil commitment. According to the complaint, by late 2012, Nerad had sent Magnus 83 emails with supporting documentation. In July 2014, Magnus filed a motion to vacate the civil commitment and the district court held a hearing. In October 2014, the district court issued an order denying the motion to vacate because of Magnus's failure to file the motion within a "reasonable time."

Nerad contends that her legal-malpractice, breach-of-contract, breach-of-implied-covenant, and breach-of-fiduciary-duty claims arising from the civil-commitment matter are not barred by the statute of limitations because it was tolled by the doctrine of fraudulent concealment. Assuming the facts in the complaint are true, as we must in this procedural posture, the relevant conduct occurred, and Nerad suffered some damage from the deficient representation, no later than October 2014 when the district court denied as untimely the motion to vacate. *See Hansen*, 934 N.W.2d at 327-28. As with the medical-malpractice action, Nerad has not articulated how the district court erred in determining that the concealment of Magnus's substance abuse was not an element of any of the causes of action premised on the civil-commitment matter. The district court properly rejected tolling based on fraudulent concealment because no facts relating to an element of the claims were concealed. Regardless of the underlying reasons, the defective performance and some damage occurred no later than 2014. Accordingly, Nerad's claims related to the civil-commitment matter were barred by the six-year statute of limitations when she brought her claims in August 2022.

III. Real-Property Matter

In 2016, Nerad entered into an agreement with Magnus to represent her in claims relating to a 2015 purchase of real property. The purchase agreement contained an arbitration clause with a 24-month deadline for filing. In September 2016, Magnus sent letters to the sellers and their agent and broker asserting defective construction.⁶ It is undisputed that before the deadline elapsed, in 2017, Nerad learned of Magnus's drug addiction and retained new counsel. Nerad's new counsel commenced an action in district court in June 2019, which the district court dismissed.

Nerad contends that the district court here incorrectly applied the law when deciding that retaining new counsel in the real-property matter, before the 24-month deadline expired, broke the chain of causation. She notes that causation is generally a question of fact. Causation can be decided as a matter of law if "reasonable minds can arrive at only one conclusion." *Raske v. Gavin*, 438 N.W.2d 704, 706 (Minn. App. 1989), *rev. denied* (Minn. June 21, 1989). If control over the legal matter ceases, and another legal practitioner continues representation in that matter, then any alleged legal malpractice of the first attorney is not causally related to any damages the aggrieved party might have incurred. *See Friesen's Inc. v. Larson*, 443 N.W.2d 830, 831 (Minn. 1989).

In this case, the complaint alleges that Nerad retained new counsel in August 2017 "to handle the real property dispute." The limitations period had not yet expired at that

⁶ This court later concluded that the deadline to bring claims under the agreement expired no later than two years after the letters were sent, in September 2018. *Nerad v. Chalupa*, No. A20-1111, 2021 WL 1605144, at *3 (Minn. App. Apr. 26, 2021).

time. Accordingly, the district court properly concluded that causation was broken as a matter of law for claims arising from the real-property matter and validly dismissed the claims.

IV. Fraudulent Concealment as a Separate Cause of Action

Nerad pleaded a separate count of “fraudulent concealment,” alleging that Magnus and the law firm “concealed or suppressed the material fact that Defendant Magnus was practicing law on behalf of Ms. Nerad while under the influence of narcotics.” The complaint further alleges that Nerad would have retained different counsel to represent her in the legal matters had she known this information. Nerad asserts that the “fraudulent concealment” count incorporates the other counts. At oral argument before this court, Nerad’s counsel indicated that the damages for fraudulent concealment were tied to the outcomes in the legal matters. He acknowledged that drug use was the only fact alleged to have been concealed.

The district court determined that the count failed to state a claim on which relief could be granted because there was no concealment of an element of another cause of action. We agree that the count fails to state a claim. We are not aware of any legal authority that identifies “fraudulent concealment” as a cause of action, rather than a doctrine for tolling the statute of limitations on *other* claims. To the extent the claim rests on concealment of a cause of action, we have already concluded that Nerad’s other claims were not dependent on the allegedly concealed information. And even if Magnus and the law firm had an affirmative duty to disclose his drug use under the rules of professional conduct, which is not an issue before this court, “[a] violation of the Rules of Professional

Conduct cannot give rise to a private action against an attorney.” *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 380 (Minn. 1989). On appeal, Nerad has not articulated a basis for this court to conclude that the district court erred in determining that the fraudulent-concealment count fails to state a claim. It is well established that “the burden of showing error rests upon the one who relies upon it.” *Waters v. Fiebelkorn*, 13 N.W.2d 461, 465 (Minn. 1944).

V. Conclusion

In sum, the claims arising from the medical-malpractice and civil-commitment matters are barred by the six-year statute of limitations and the statute was not tolled by fraudulent concealment. The claims arising from the real-property matter lack causation as a matter of law. The separate claim for fraudulent concealment fails to state a claim on which relief can be granted. Because all underlying tort claims are validly dismissed, there is no basis for a claim of vicarious liability. Thus, the district court did not err in granting the motions to dismiss.

Affirmed.